



BATTLE MOUNTAIN COMMUNITY PARTNERSHIP PASS  
MEMBERSHIP PLAN

REVISED FEBRUARY 27, 2008

BATTLE MOUNTAIN CLUB



## BATTLE MOUNTAIN COMMUNITY PARTNERSHIP PASS MEMBERSHIP PLAN

### INTRODUCTION

#### Membership Opportunities

The Battle Mountain Club offers Residents the opportunity to enjoy outstanding recreational and social facilities in the private Battle Mountain community.

The terms and conditions of membership in, and use of, the Battle Mountain Club are contained in this Battle Mountain Community Partnership Pass Membership Plan, the Rules and Regulations for The Battle Mountain Club, and such other policies as may be adopted by the Club Owner, all as may be amended from time to time.

#### Club Facilities

The Battle Mountain Club facilities will be located within the Battle Mountain development, and may consist of a golf course, country club facilities, ski area and related alpine or cross-country skiing facilities, aquatics facilities and other recreational and social facilities.

#### Ownership and Operation

The Battle Mountain Club is owned and operated by the Club Owner and is offered as an amenity, subject to the membership terms and conditions set forth herein, to Residents of the Towns of Minturn and Red Cliff who hold a current Battle Mountain Community Partnership Pass, and to such other potential members as the Club Owner may determine in its sole discretion from time to time. Membership in The Battle Mountain Club represents a license to use designated Club Facilities in common with such other persons as the Club Owner may authorize and at such dates and times as the Club Owner shall designate from time to time. Town Resident Members in The Battle Mountain Club do not acquire any ownership, proprietary, or beneficial interest in, or right to control, The Battle Mountain Club or any of its facilities.

## I. DEFINITIONS

In addition to any other terms defined herein, the following terms shall have the following meanings:

**Battle Mountain Community Partnership Pass** shall mean an annual membership pass to the Club issued to any Resident who has complied with the membership application and eligibility requirements established pursuant to this Membership Plan and the Rules and Regulations of the Battle Mountain Club. The term of each Battle Mountain Community Partnership Pass shall be one calendar year, commencing on January 1 and terminating on December 31.

**Club** shall mean The Battle Mountain Club.

**Club Facilities** shall mean the golf course, country club facilities, ski area or related alpine or cross-country skiing facilities, aquatics facilities and other recreational and social facilities and related amenities made available to Town Resident Members that are actually constructed by the Club Owner.

**Club Owner** shall mean initially Ginn Battle North, LLC, a Georgia limited liability company, Ginn Battle South, LLC, a Georgia limited liability company, and Ginn-LA Battle One Ltd., LLLP, a Georgia limited liability limited partnership, or their designee, successors or assigns.

**Membership Plan** shall mean this Battle Mountain Community Partnership Pass Membership Plan, which, together with the Rules and Regulations of the Battle Mountain Club shall apply to all Town Resident Members and other users permitted to use the Club Facilities pursuant to this Membership Plan. The Membership Plan may be amended from time to time by the Club Owner, as provided herein.

**Resident** shall mean any person who has attained the age of sixteen (16) years and shall have resided in the Town of Minturn or the Town of Red Cliff for at least the eighteen (18) consecutive months immediately prior to the date of application for membership, and whose sole legal place of residence is within the Town of Minturn or the Town of Red Cliff.

**Rules and Regulations** shall mean the Rules and Regulations of the Club, which are adopted by the Club Owner and may be amended from time to time by the Club Owner in its sole discretion. The Rules and Regulations, together with the Membership Plan, shall apply to all Town Resident Members.

**Town Resident Member** shall mean any Resident who holds a current Battle Mountain Community Partnership Pass.

## II. USE PRIVILEGES

### A. Establishment of Rules and Regulations

1. The Club Owner may adopt Rules and Regulations, and may modify, change, add to, or eliminate the Rules and Regulations or any portion thereof at any time, in its sole discretion.

### B. Use of the Club by Town Resident Members

1. For so long as the Battle Mountain community has operating resort facilities, each Town Resident Member shall be entitled, from time to time, to use the Club Facilities, services and special events, in accordance with the terms of this Membership Plan and the Rules and Regulations.
2. Use by Town Resident Members shall be on a space available, first come/first served basis when the Club Owner makes the Club Facilities available to Town Resident Members. The Club Owner agrees to make the Club Facilities available to Town Resident Members for a minimum of 45 days per calendar year, at least 30 of which shall occur during the “Winter Season” (between November 15 and April 15), and at least 15 of which shall occur during the “Summer Season” (between April 16 and November 14). During the Winter Season, the Club Facilities shall (i) be made available for a minimum of ten days that are weekends (Saturday or Sunday), holidays, or other days during which the Eagle County School District is not in session, and (ii) be made available, conditions permitting, for a minimum of three days per month in each calendar month of the Winter Season. For purposes of the Summer Season, one “day” shall constitute reservation of a minimum of eight tee times for a total of thirty-two Town Resident Member golfers. In the event these tee times are not reserved by Town Resident Members at least forty-eight hours prior to the opening of the applicable day, they may be assigned to other Club members. The Club Owner agrees to maintain a website notifying Town Resident Members of the dates and times on which the Club Facilities are available to Town Resident Members.
3. In an effort to insure that the Battle Mountain project remains within its traffic projections, the Club Owner may make the Club’s transit system available to all Town Resident Members and their children and guests in lieu of providing on-site parking.
4. Children and grandchildren of a Town Resident Member under the age of 16 may use the Club Facilities in accordance with this Membership Plan and the Rules and Regulations.
5. From time to time, the Club Owner may make the Club Facilities available to non-family guests of Town Resident Members. Use of the Club Facilities by guests of Town Resident Members must be in accordance with this Membership Plan and the

Rules and Regulations, provided the guest is accompanied by the Town Resident Member at all times.

6. The Club Owner shall have the right, in its sole discretion, to modify the Rules and Regulations and this Membership Plan concerning use of the Club Facilities by Town Resident Members and to deny access to the Club Facilities to anyone.

#### C. Membership Cards

1. A membership card will be issued to each Town Resident Member. Membership cards will not be issued to children and grandchildren of Town Resident Members under the age of 16, as they may use the Club Facilities only when accompanied and under the supervision of their Town Resident Member parent or grandparent. Town Resident Members must have their membership card with them at all times in order to access and use the Club Facilities. Membership cards are not transferable. Membership cards will only be issued upon payment of the Annual Fee and all other applicable charges and fees payable by the Town Resident Member.
2. A membership card may not be used by any person other than the person to whom it is issued. Failure to comply with this rule may result in suspension or termination of the Battle Mountain Community Partnership Pass.
3. In the event of a lost or stolen membership card, the Club Owner must be notified immediately. The Town Resident Member's membership will be cancelled and a new membership number issued. This procedure reduces the risk that unauthorized persons will be able to charge items to the Town Resident Member's credit card account. Until notification of card loss or theft is received in writing by the Club Owner, the Town Resident Member shall be responsible for all charges placed on the account. The Town Resident Member may be charged an amount to be determined by the Club Owner from time to time for each new card.

#### D. Club Use by Children of Members

1. Children and grandchildren of Town Resident Members under the age of 14 may use the Club Facilities so long as they accompanied by and under the direct supervision of the Town Resident Member at all times. Children and grandchildren of Town Resident Members between the ages of 14 and 16 may use the Club Facilities provided his or her Town Resident Member parent or grandparent is present at the Club Facilities at all times. Town Resident Members are responsible for the actions and safety of their children and grandchildren.
2. Children and grandchildren of Town Resident Members can not bring their own guests or other children of the Town Resident Member to the Club Facilities.
3. All charges incurred by children and grandchildren of Town Resident Members will be charged to the Town Resident Member's credit card.

4. It is incumbent upon all Town Resident Members to inform all family members of the Club's policies, Rules and Regulations and requirements of this Membership Plan. The Club Owner may deny future access to the Club's Facilities to anyone who does not observe the Club's policies, the Rules and Regulations, or the requirements of this Membership Plan.

E. Guest Privileges

1. The Club Owner may extend privileges to guests of Town Resident Members. The Club Owner reserves the right to limit the number of guests that accompany a Town Resident Member on any given day. The Club Owner shall establish from time to time the rate of daily fees, charges and the rules and regulations for use of the Club Facilities by guests of Town Resident Members.
2. All guest expenses, including but not limited to charges for food, beverages, goods and services, will be charged to the Town Resident Member's credit card.
3. It is incumbent upon all Town Resident Members to inform all guests of the Club's policies, Rules and Regulations, and the requirements of this Membership Plan. The Club Owner may deny future access to the Club's Facilities to anyone who does not observe the Club's policies, the Rules and Regulations or the requirements of this Membership Plan.
4. Guest privileges may be limited, withdrawn or revoked by the Club Owner in general or specifically to certain Town Resident Members from time to time in its sole and absolute discretion. Notice of such limitation will be given to the Member(s) by the Club Owner.

F. Reservations and Cancellations.

1. The Club Owner may implement policies governing reservations and cancellations for use of the Club Facilities, special events, and all other activities from time to time.

IV. ELIGIBILITY, APPLICATION, TRANSFER AND TERMINATION OF MEMBERSHIPS

A. Eligibility for Memberships

1. All Residents shall be eligible for memberships.

B. Application for Memberships

1. Each Resident who desires a Membership must complete and return an application, together with the required Annual Fee to the Club Owner on or before October 1 of the year preceding the calendar year of the annual membership.
2. Each application shall include one of the following documentary forms of proof of residency:
  - a. Voter registration within the Town of Minturn limits for the required period of time preceding the date of application. The address listed must be the same as the applicant's current physical address.
  - b. A lease agreement showing the applicant's name, the dates of the lease, and the physical address of the residential leased premises.
  - c. Utility bills (water, electric, cable, phone, sanitation) showing the applicant's name and physical address of the property serviced.
3. A Town Resident Member under the age of 18 who cannot produce proof of residency in any of the forms identified in Section IV.B.2 above shall submit his or her application together with the application and proof of residency for his or her parent or grandparent.

C. Transfer of Memberships

1. Each Battle Mountain Community Partnership Pass is personal to the Resident to whom it is issued. No Battle Mountain Community Partnership Pass may be assigned, transferred or conveyed, or otherwise used by any person except the Resident to whom the Battle Mountain Community Partnership Pass is issued.

D. Termination of Memberships

1. Any Town Resident Membership may be suspended or terminated by the Club Owner, if in the sole discretion of the Club Owner, the Town Resident Member:
  - a. Does not meet eligibility requirements for continued membership;
  - b. Submits false information on the application for membership or for guest privileges;

- c. Permits his or her membership card to be used by anyone other than the designated holder;
  - d. Does not conform to the Club's policies, the Rules and Regulations, or the requirements of this Membership Plan;
  - e. Fails to pay any amount owed to the Club Owner in connection with the membership in a proper and timely manner;
  - f. Fails in, or refrains from, any other conduct or obligation determined by the Club Owner as appropriate for suspension or termination of membership; or
  - g. Violates the Rules and Regulations or others promulgated by the Club Owner from time to time, or violates the terms and provisions of the Membership Plan.
2. Upon termination or suspension, the Town Resident Member shall not be entitled to further use of the Club Facilities and shall not be eligible for future membership in the Club unless such future membership is approved by the Club Owner, which approval may be granted, conditioned or withheld in the Club Owner's sole discretion.

## V. FINANCIAL OBLIGATIONS OF MEMBERS

### A. Annual Fee

The Annual Fee is payable upon submission of an application for a Battle Mountain Community Partnership Pass. The amount of the Annual Fee shall initially be \$50; provided, however, commencing at the sixth year of the Battle Mountain Community Partnership Pass Membership Plan program, the Club Owner may modify the Annual Fee from time to time in its sole discretion. The Annual Fee shall be waived for all Town Resident Members who are 65 years of age or older on October 1 of the year preceding the calendar year of the annual membership.

### B. Other Fees

1. From time to time, the Club Owner may establish charges for food, beverages, or other items, including but not limited to service charges, guest fees, and fees for use of the Club Facilities. The Club Owner shall keep on file, and require to be updated, a valid credit card number for each Town Resident Member for the purpose of charging such additional charges when the same are levied by the Club Owner or incurred by the Town Resident Member. The Club Owner may, in its sole discretion, change the amount for various items and services without advance notice to the Town Resident Members. Any fees incurred by a family member or guest of a Town Resident Member shall be charged to that Town Resident Member's credit card account.
2. If any Town Resident Member is delinquent in payment of any fees or credit card charges, the Club Owner may in its sole discretion take whatever action it deems necessary to effect collection. If the Club Owner commences any legal action to collect any amount owed by a Town Resident Member or enforce any other liability of any Town Resident Member to the Club Owner, and if judgment is obtained by the Club Owner, the Town Resident Member shall also be liable for all costs and expenses of such legal action and reasonable attorney's fees required in connection with said action, including but not limited to appellate proceedings.
3. In order to protect Town Resident Members from improper charges, membership cards must be presented at the point of sale for all transactions. This includes charges incurred by family members and guests which are charged to the Town Resident Member.

## VI. MISCELLANEOUS PROVISIONS

### A. Amendment

Amendment to this Membership Plan shall not be permitted without the written consent of the Town Council.

### B. Assumption of Risk

In consideration for the privilege of using the Club Facilities, each Town Resident Member and other person entering upon or using the Club Facilities agrees:

- To accept all risks associated with the use of the Club Facilities and to release, hold harmless and indemnify the Club, the Club Owner, and all entities owned or controlled by the Club Owner, from any and all claims arising out of or in any way connected with such use of the Club Facilities, and to defend the Club, the Club Owner, and all entities owned or controlled by the Club Owner against any and all claims arising out of or in any way connected with such use of the Club Facilities; and
- To assume sole responsibility for their personal safety and the safety of their personal property brought upon, used or stored at the Club Facilities. The Club, the Club Owner, and all entities owned or controlled by the Club Owner shall not be responsible for any loss or damage to any personal property brought upon, used or stored at the Club's Facilities.

Each Town Resident Member further agrees to be responsible and liable for any property damage and/or personal injury which he or she causes, or which is caused by his or her authorized users or guests, while on the Club's Facilities, or at any activity or function, operated, organized, arranged or sponsored by the Club. In addition, any Town Resident Member who arranges or sponsors any activity or function at the Club's Facilities shall be responsible for any damage or injury even if such damage or injury was not caused by the Town Resident Member. The costs of repairing any such damage shall be charged to the Town Resident Member.

Any Town Resident Member, family member, guest, or other person who, in any manner, makes use of or accepts the use of any apparatus, appliance, facility, privilege or service whatsoever owned, leased or operated by the Club Owner in connection with its operation of the Club, or who engages in any contest, game, function, exercise, competition or other activity operated, organized, arranged or sponsored by the Club Owner as a Club benefit, either on or off of the Club's Facilities, shall do so at his or her own risk. Members, family members, guests and other persons shall hold the Club and the Club Owner, and their owners, members, directors, officers, employees, representatives, agents and affiliates (collectively the "***Indemnified Parties***") harmless from any and all loss, cost, claim, injury,

damage or liability sustained or incurred by him or her, resulting therefrom and/or from any act or omission, whether due to negligence or otherwise of any of the Indemnified Parties. All Town Resident Members shall have, owe, and perform the same obligation to the Indemnified Parties hereunder in respect to such loss, cost, claim, injury, damage or liability sustained or incurred by any guest or family member.

Should any party bound hereby bring suit against any of the Indemnified Parties in connection with any event operated, organized or sponsored by the Club Owner as a Club benefit or on any other claim or matter in connection with membership in the Club and fail to obtain judgment therein against the same, said party shall be liable to the Indemnified Parties for all costs and expenses incurred by it in the defense of such suit, including court costs and attorney's fees through all appellate proceedings.

C. No Ownership Interest

No Town Resident Member shall have any ownership or proprietary interest, beneficial interest or any other vested interest whatsoever in the Club or any of the Club Facilities. Membership constitutes only a license to use some or all of the Club Facilities as set forth in this Membership Plan and the Rules and Regulations, as both may be amended from time to time. Membership is offered as an opportunity to obtain the recreational and social benefits of the Club only, and should not be viewed as an investment purchased with any view toward, or expectation of, profit.

D. Representations

No person is authorized to make any representation or provide any information with regard to the Club or Battle Mountain Community Partnership Pass contrary to or in addition to the information contained in this Membership Plan and the Rules and Regulations, and any such representation, if made, is hereby repudiated.

E. Denial of Access to Club Facilities

The Club Owner shall have the right to deny access to the Club Facilities to anyone, including but not limited to Town Resident Members, their guests and family.

F. Interest Rate

Interest shall accrue on all unpaid amounts due and owing pursuant to this Membership Plan and the Rules and Regulations at a rate of 18 percent (18%) annually until such due and owing amounts are paid.